

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF HAWAII

3 UNITED STATES OF AMERICA,)
4)
5 Plaintiff,)
6)
7 vs.)
8)
9 NORMAN L. AKAU III, (09))
10)
11 Defendant.)
12)
13 _____)

14 TRANSCRIPT OF PROCEEDINGS VIA VIDEO TELECONFERENCE
15 BEFORE THE HONORABLE DERRICK K. WATSON,
16 UNITED STATES DISTRICT COURT JUDGE
17

18 APPEARANCES:

19

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25

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300 Ala Moana Boulevard
Honolulu, Hawaii 96850

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Proceedings recorded by machine shorthand, transcript produced
with computer-aided transcription (CAT).

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1 June 9, 2021 10:06 a.m.

10:06AM 2 THE CLERK: Criminal Number 19-00099-DKW, United

10:07AM 3 States of America versus Defendant (09) Norman L. Akau III.

10:07AM 4 This case has been called for a change of plea

10:07AM 5 hearing.

10:07AM 6 Counsel, please make your appearances for the record.

10:07AM 7 MR. INCIONG: Good morning, Your Honor. Mark Inciong

10:08AM 8 for the United States.

10:08AM 9 THE COURT: Mr. Inciong, good morning.

10:08AM 10 MR. RICHARDS: Good morning, Your Honor. Ronald

10:08AM 11 Richards taking the plea for the defendant Norman L. Akau III

10:08AM 12 who is present and in custody.

10:08AM 13 THE COURT: Mr. Richards, good morning. And,

10:08AM 14 Mr. Akau, good morning to you, sir.

10:08AM 15 THE DEFENDANT: Good morning, sir.

10:08AM 16 THE COURT: We're here this morning because, as I

10:08AM 17 understand it, the defendant Mr. Akau wishes to plead guilty to

10:08AM 18 Count 1 of the June 18, 2020 superseding indictment, and that

10:08AM 19 would be pursuant to a plea agreement with the government.

10:08AM 20 Counsel have advised that Mr. Akau wishes to proceed

10:08AM 21 this morning by video and consents to do so. As a result,

10:08AM 22 there are a few things that I need to get on the record before

10:08AM 23 we go any further.

10:08AM 24 First of all, Mr. Akau, pursuant to Section 15002 of

10:08AM 25 the CARES Act, the Coronavirus Aid Relief and Economic Security

10:08AM 1 Act, there are certain circumstances in which a defendant may
10:09AM 2 consent, after consulting with counsel, to proceed with his
10:09AM 3 change of plea hearing.

10:09AM 4 On May 6th of this year the chief judge for our
10:09AM 5 district found that change of plea hearings such as this one,
10:09AM 6 originating with the defendant incarcerated at FDC, Judge
10:09AM 7 Seabright found that those hearings cannot be conducted in
10:09AM 8 person without seriously jeopardizing public health and safety.
10:09AM 9 Judge Seabright made that finding pursuant to Section
10:09AM 10 15002(b) (2) of the CARES Act.

10:09AM 11 Mr. Akau, your counsel has advised that you consent to
10:09AM 12 proceed with this hearing by video; I would like to get that
10:09AM 13 consent again on the record before we proceed.

10:09AM 14 Mr. Akau, can you confirm, sir, that you consulted
10:09AM 15 with Mr. Richards concerning whether or not to proceed with
10:09AM 16 this plea hearing this morning by video from FDC rather than
10:09AM 17 through an in-person appearance in court?

10:09AM 18 THE DEFENDANT: I have consented, Your Honor.

10:09AM 19 THE COURT: Okay, and have you consulted with
10:09AM 20 Mr. Richards regarding that?

10:10AM 21 THE DEFENDANT: Yes, I have.

10:10AM 22 THE COURT: Mr. Richards, do you concur that your
10:10AM 23 consultation with Mr. Akau has included whether or not to
10:10AM 24 proceed with this hearing by video?

10:10AM 25 MR. RICHARDS: You mean, you want me to -- my only

10:10AM 1 concern, Your Honor, is I don't want to waive any privilege
10:10AM 2 with Mr. Akau, but I could tell you that we discussed generally
10:10AM 3 the option of doing the change of plea and that the video is an
10:10AM 4 option that he wants to utilize because he doesn't want to go
10:10AM 5 into quarantine and he's happy with doing it this way.

10:10AM 6 THE COURT: Mr. Akau, having so consulted with
10:10AM 7 Mr. Richards, do you, sir, consent to proceed with your change
10:10AM 8 of plea hearing by video?

10:10AM 9 THE DEFENDANT: Yes, Your Honor, I consent.

10:10AM 10 THE COURT: Thank you. In addition, the Court finds
10:10AM 11 that this change of plea hearing cannot be further delayed
10:10AM 12 without serious harm to the interest of justice. In particular
10:10AM 13 this very pandemic that has been with us has been with us
10:11AM 14 unfortunately for going on a year and a half now. As
10:11AM 15 mentioned, the chief judge of this district has already found
10:11AM 16 in a series of CARES Act orders, the most recent one being on
10:11AM 17 May 6th of this year, that change of plea hearings like this
10:11AM 18 one cannot proceed in person without seriously jeopardizing
10:11AM 19 public health and safety.

10:11AM 20 Mr. Akau is incarcerated at FDC Honolulu. If he were
10:11AM 21 to appear in person, both Mr. Akau as well as his escorts would
10:11AM 22 face an enhanced risk presented by the current pandemic. And
10:11AM 23 Mr. Akau would also, as Mr. Richards just referenced, be
10:11AM 24 required by FDC Honolulu procedures to quarantine upon return.
10:11AM 25 Such a quarantine would limit, among other things, his

10:11AM 1 communication with others to include counsel.

10:11AM 2 In addition, there is limited programming available to
10:11AM 3 pretrial detainees like Mr. Akau. As a result, until he is put
10:11AM 4 into the sentencing queue and is ultimately sentenced, he will
10:12AM 5 not be eligible for additional programming that could result in
10:12AM 6 a number of changes beneficial to him, to include the possible
10:12AM 7 early release as well as a lower security classification.

10:12AM 8 In addition, the Court finds that delay would
10:12AM 9 eventually result in a backlog of criminal matters on this
10:12AM 10 Court's docket, which is precisely what did occur last year
10:12AM 11 when the pandemic -- the same pandemic closed our courthouse
10:12AM 12 for several months.

10:12AM 13 Mr. Akau, before accepting your plea, there are a few
10:12AM 14 questions that I need to ask you to ensure that your decisions
10:12AM 15 are knowing and voluntary. If I ask you anything at all that
10:12AM 16 is confusing or ambiguous to you, it's certainly not my intent
10:12AM 17 to do that, but if I do please point that out to me, and I'll
10:12AM 18 do my very best to ask you a better question. Do you
10:12AM 19 understand that, sir?

10:12AM 20 THE DEFENDANT: Yes, Your Honor.

10:12AM 21 THE COURT: Ms. Kimura, would you please swear the
10:12AM 22 defendant?

10:12AM 23 THE CLERK: Please raise your right hand.

10:12AM 24 (The defendant was sworn to answer truthfully.)

10:12AM 25

10:13AM 1 MR. RICHARDS: Is it me or is someone freezing?

10:14AM 2 THE CLERK: The judge is frozen.

10:14AM 3 MR. RICHARDS: I'm frozen?

10:14AM 4 THE CLERK: No, the judge is. We will let him know.

10:14AM 5 Thank you.

10:14AM 6 MR. RICHARDS: Believe me, I've frozen plenty of

10:14AM 7 times. I made sure that I'm in the highest internet, so I was

10:14AM 8 like it can't be me.

10:14AM 9 THE COURT: All right. Did I lose connection here?

10:14AM 10 THE CLERK: Yes. You're back on, Judge.

10:14AM 11 THE COURT: I apologize for that. I didn't realize

10:14AM 12 that I was the one I guess frozen. You all looked frozen to

10:14AM 13 me, and then I realized that --

10:14AM 14 MR. RICHARDS: The screen looks ten years younger.

10:14AM 15 THE COURT: Yeah. Well, then I realized that it

10:14AM 16 couldn't be the five of you, it must be the one of me; so I

10:14AM 17 logged out and reconnected. I apologize. I'm in the

10:14AM 18 courthouse, so it's not a personal cellular connection or WiFi

10:14AM 19 connection that is to blame. Hopefully we won't encounter that

10:15AM 20 again.

10:15AM 21 So as I was saying -- Mr. Akau, before voluntary --

10:15AM 22 (Audio transmission gap).

10:20AM 23 Let's roll. Hopefully this will last.

10:20AM 24 Mr. Akau, can you hear me, sir?

10:20AM 25 THE DEFENDANT: Yes, I can Your Honor.

10:20AM 1 THE COURT: Mr. Richards, are you there?

10:20AM 2 MR. RICHARDS: I am, Your Honor.

10:20AM 3 THE COURT: Thank you your for your patience.

10:20AM 4 Mr. Akau, before accepting your plea, as I was

10:20AM 5 hopefully saying earlier, there are a few questions that I need

10:20AM 6 to ask you this morning, and that's to ensure that your

10:20AM 7 decisions are knowing and voluntary. If I ask you anything at

10:20AM 8 all that is ambiguous or that is unclear to you in any fashion,

10:21AM 9 please point that out to me, and I'll do my best to correct

10:21AM 10 that; okay?

10:21AM 11 THE DEFENDANT: Yes. Thank you, Your Honor.

10:21AM 12 THE COURT: Ms. Kimura, would you then swear the

10:21AM 13 defendant in?

10:21AM 14 THE CLERK: Please raise your right hand.

10:21AM 15 (The defendant was sworn to answer truthfully.)

10:21AM 16 THE COURT: Mr. Akau, please understand that you have

10:21AM 17 now taken an oath to answer my questions this morning

10:21AM 18 truthfully. And if you do anything other than that, you could

10:21AM 19 be subjecting yourself to additional charges. Do you

10:21AM 20 understand that, sir?

10:21AM 21 THE DEFENDANT: Yes, Your Honor.

10:21AM 22 THE COURT: Please state your full name then.

10:21AM 23 THE DEFENDANT: Norman Lani Akau, III.

10:21AM 24 THE COURT: How old are you, sir?

10:21AM 25 THE DEFENDANT: I'm 49 years old.

10:21AM 1 THE COURT: What is the highest level of education
10:22AM 2 that you have achieved?

10:22AM 3 THE DEFENDANT: High school diploma, 12th grade.

10:22AM 4 THE COURT: Who is your most recent employer?

10:22AM 5 THE DEFENDANT: Magnum PI.

10:22AM 6 THE COURT: Magnum PI, the TV show?

10:22AM 7 THE DEFENDANT: Yes, Your Honor.

10:22AM 8 THE COURT: What did you do? Were you a part of the
10:22AM 9 production team?

10:22AM 10 THE DEFENDANT: I was part of the production team in
10:22AM 11 management.

10:22AM 12 THE COURT: And you understand, speak, and I assume
10:22AM 13 write English all just fine as a high school graduate; is that
10:22AM 14 fair?

10:22AM 15 THE DEFENDANT: Yes, I do. I read and speak English
10:22AM 16 well, Your Honor.

10:22AM 17 THE COURT: And have you taken any type -- I know
10:22AM 18 you're in custody, but have you taken any type of drugs, legal
10:22AM 19 or illegal, within the past 48 hours?

10:22AM 20 THE DEFENDANT: I have not. No, sir.

10:22AM 21 THE COURT: And have you consumed any alcohol,
10:22AM 22 Mr. Akau, in the last 24 hours?

10:22AM 23 THE DEFENDANT: I have not, Your Honor.

10:23AM 24 THE COURT: Is it fair to say then that you are sober
10:23AM 25 and thinking clearly this morning?

10:23AM 1 THE DEFENDANT: Yes, Your Honor, I am.

10:23AM 2 THE COURT: What is your understanding then of the
10:23AM 3 purpose of this morning's hearing?

10:23AM 4 THE DEFENDANT: I am to have a change of plea from not
10:23AM 5 guilty to guilty for the charge of Count 1, conspiracy for
10:23AM 6 racketeering.

10:23AM 7 THE COURT: And have you had enough time, sir, to
10:23AM 8 discuss that decision whether or not to plead guilty as well as
10:23AM 9 this case generally with Mr. Richards?

10:23AM 10 THE DEFENDANT: Yes, Your Honor, I have.

10:23AM 11 THE COURT: And are you satisfied with his
10:23AM 12 representation of you thus far in this case?

10:23AM 13 THE DEFENDANT: Yes, sir, I'm satisfied.

10:23AM 14 THE COURT: Mr. Richards, do you have any reason to
10:23AM 15 doubt Mr. Akau's capacity or competence to enter a knowing and
10:23AM 16 voluntary plea this morning?

10:23AM 17 MR. RICHARDS: No, and I can tell you his penmanship
10:23AM 18 is the best that I've seen in almost 28 years. When he writes
10:24AM 19 me a letter, it's outstanding.

10:24AM 20 THE COURT: Looks like calligraphy, huh?

10:24AM 21 MR. RICHARDS: Honestly I couldn't write that well if
10:24AM 22 you gave me a week. It's perfectly printed.

10:24AM 23 THE COURT: Good to hear.

10:24AM 24 Mr. Akau, my understanding then is you are pleading
10:24AM 25 guilty to Count 1 this morning, as you just mentioned yourself

10:24AM 1 a minute ago. Count 1 charges you with conspiring to violate
10:24AM 2 the racketeering laws of the United States in violation of
10:24AM 3 Title 18 of the United States Code, Section 1962D, as in David.
10:24AM 4 Have you discussed this particular charge and
10:24AM 5 allegations behind that charge with counsel?
10:24AM 6 THE DEFENDANT: Yes, Your Honor, I have.
10:24AM 7 THE COURT: And based on your own review and
10:24AM 8 consultation with counsel, are you confident that you
10:24AM 9 understand the charges brought against you?
10:24AM 10 THE DEFENDANT: Yes, I do, Your Honor. I understand.
10:24AM 11 THE COURT: And do you have any questions, Mr. Akau,
10:24AM 12 with respect to any of the charges or allegations?
10:24AM 13 THE DEFENDANT: I do not at this time, Your Honor.
10:25AM 14 THE COURT: Can you tell me, Mr. Akau, if anyone has
10:25AM 15 threatened, forced or coerced you into pleading guilty?
10:25AM 16 THE DEFENDANT: No one has done any of those things.
10:25AM 17 I made this choice on my own free will, Your Honor.
10:25AM 18 THE COURT: And to your knowledge, Mr. Akau, has
10:25AM 19 anyone threatened, forced or coerced someone close to you,
10:25AM 20 meaning a close friend or relative, in order to get you to
10:25AM 21 plead guilty?
10:25AM 22 THE DEFENDANT: No one has, Your Honor.
10:25AM 23 THE COURT: Has anyone made any promises to you in
10:25AM 24 order to get you to plead guilty, other than the promises that
10:25AM 25 the government has made in its written plea agreement with you?

10:25AM 1 THE DEFENDANT: No one has made any promises, Your
10:25AM 2 Honor.

10:25AM 3 MR. RICHARDS: Your Honor --

10:25AM 4 THE COURT: Are you pleading guilty then, Mr. Akau,
10:25AM 5 because you are guilty of the conduct alleged in Count 1?

10:25AM 6 THE DEFENDANT: Yes, Your Honor, that is true. I'm
10:26AM 7 pleading guilty because --

10:26AM 8 THE COURT: Because what? I missed the last part.

10:26AM 9 THE DEFENDANT: (Inaudible)

10:26AM 10 THE COURT: I'm sorry, I missed that still.

10:26AM 11 THE DEFENDANT: I said I'm pleading guilty to that
10:26AM 12 charge for I'm guilty of it, Your Honor.

10:26AM 13 THE COURT: Mr. Inciong, would you then please
10:26AM 14 describe the potential penalties that Mr. Akau faces for
10:26AM 15 pleading guilty to this particular count?

10:26AM 16 MR. INCIONG: Yes, Your Honor. The maximum penalties
10:26AM 17 that apply to Count 1 of the superseding indictment to which
10:26AM 18 Mr. Akau is pleading is a term of imprisonment of not more than
10:26AM 19 20 years. There is also a potential fine of up to \$250,000.
10:26AM 20 In addition, there is a term of supervised release of up to
10:26AM 21 three years that would be imposed. Finally, there is a \$100
10:26AM 22 mandatory special assessment that would be assessed.

10:26AM 23 THE COURT: Is there any forfeiture component to this
10:27AM 24 particular plea?

10:27AM 25 MR. INCIONG: Your Honor, the plea agreement does

10:27AM 1 generally call for forfeiture, but at this time there are no
10:27AM 2 applicable items for forfeiture in regard to Mr. Akau.

10:27AM 3 THE COURT: All right. Mr. Richards, do you agree
10:27AM 4 with the potential penalties that your client faces for
10:27AM 5 pleading guilty to Count 1 as just described by the
10:27AM 6 government's attorney?

10:27AM 7 MR. RICHARDS: I do, but at the appropriate time, Your
10:27AM 8 Honor. I just want to address the portion of the plea
10:27AM 9 agreement and the factual basis that I believe would be --
10:27AM 10 that I want to make sure it's segregated in the record with
10:27AM 11 respect to paragraph 21E with respect to sentencing. There's
10:27AM 12 some statements which are part of the plea agreement that were
10:27AM 13 provided pursuant to a cooperation agreement; so whatever the
10:28AM 14 appropriate time is, I'll point that out to the Court.

10:28AM 15 THE COURT: All right. And we are certainly going to
10:28AM 16 get into the details of the plea agreement in just a minute.
10:28AM 17 That would be the appropriate time.

10:28AM 18 Mr. Akau, do you, sir, understand the potential
10:28AM 19 penalties that you face for pleading guilty to Count 1 as just
10:28AM 20 described by AUSA Inciong?

10:28AM 21 THE DEFENDANT: Yes, Your Honor, I understand fully.

10:28AM 22 THE COURT: Then I'll turn back to Mr. Inciong. I'm
10:28AM 23 going to turn back to him in just a minute to summarize the
10:28AM 24 essential terms of the plea agreement. Before we get there, I
10:28AM 25 want to be sure, Mr. Akau, that you confirm you've entered into

10:28AM 1 a plea agreement with the government, have you not?

10:28AM 2 THE DEFENDANT: Yes, Your Honor, I have.

10:28AM 3 THE COURT: And that is a written plea agreement?

10:28AM 4 THE DEFENDANT: Yes.

10:28AM 5 THE COURT: And can you confirm that you've read that
10:28AM 6 document, the plea agreement, in full?

10:28AM 7 THE DEFENDANT: Yes, I have read it in full, Your
10:28AM 8 Honor.

10:28AM 9 THE COURT: And discussed it with counsel as well?

10:29AM 10 THE DEFENDANT: Yes, I have.

10:29AM 11 THE COURT: Are you confident, based on your own
10:29AM 12 review and discussions with counsel, that you understand each
10:29AM 13 of the terms of your plea agreement with the United States?

10:29AM 14 THE DEFENDANT: Yes, I do, Your Honor. I understand
10:29AM 15 fully.

10:29AM 16 THE COURT: It is a 22-paged document that is the plea
10:29AM 17 agreement. Is that your signature, sir? I have a copy of it
10:29AM 18 here in front of me, is that your signature that appears on the
10:29AM 19 final page, page 22, which at least on my copy bears the date
10:29AM 20 of June 8, 2021?

10:29AM 21 THE DEFENDANT: Yes, Your Honor, that is my signature.

10:29AM 22 THE COURT: And does the plea agreement reflect the
10:29AM 23 entire agreement, Mr. Akau, that you have with the government?

10:29AM 24 THE DEFENDANT: Yes, it does, Your Honor.

10:29AM 25 THE COURT: In other words, did the government make

10:29AM 1 any verbal or oral promises to you that they did not put into
10:29AM 2 the body of the written plea agreement?

10:29AM 3 THE DEFENDANT: There was no promises that is not
10:29AM 4 written on the plea agreement, Your Honor.

10:29AM 5 THE COURT: Do you understand, Mr. Akau, that the
10:30AM 6 Court is not required to accept the plea agreement and that I
10:30AM 7 could reject it after I consider a presentence investigation
10:30AM 8 and investigation report, both of which will be completed over
10:30AM 9 the course of the next several months after the conclusion of
10:30AM 10 this morning's hearing?

10:30AM 11 THE DEFENDANT: Yes, Your Honor.

10:30AM 12 MR. RICHARDS: Your Honor --

10:30AM 13 THE COURT: Do you understand --

10:30AM 14 Mr. Richards.

10:30AM 15 MR. RICHARDS: On the question of promises, I just
10:30AM 16 want the Court to be aware that before there was a confirmation
10:30AM 17 between counsel and I that his proffer statements would not be
10:30AM 18 used against him at sentencing and then we discovered later on,
10:30AM 19 after we discussed sort of a side letter we had, that the plea
10:30AM 20 agreement did provide in paragraph 21E, sort of the same thing.
10:30AM 21 But I just wanted the Court to be aware that I did advise my
10:31AM 22 client, and we did have an agreement that the statements that
10:31AM 23 were made in the proffer section that may not be part of the
10:31AM 24 indictment were not going to be used against Mr. Akau.

10:31AM 25 THE COURT: Okay. Mr. Inciong, can you -- do you want

10:31AM 1 to address that?

10:31AM 2 MR. INCIONG: Yes, Your Honor. As I discussed with
10:31AM 3 Mr. Richards, I was going to address this when we got into the
10:31AM 4 description of the plea agreement. But at paragraph 21E of the
10:31AM 5 plea agreement on page 20, which states that pursuant to
10:31AM 6 Section 1B1.8(a) of the Sentencing Guidelines, the prosecution
10:31AM 7 agrees that self-incriminating information provided pursuant to
10:31AM 8 this agreement to cooperate will not be used in determining the
10:31AM 9 applicable guideline range, except as may be provided in this
10:31AM 10 agreement and under Section 1B1.8, subparagraph B, of the
10:31AM 11 Sentencing Guidelines.

10:31AM 12 In paragraph 8E of the factual basis of the plea
10:32AM 13 agreement, there are some admissions that are included that the
10:32AM 14 defendant made under proffer. So the government's position, as
10:32AM 15 I've explained to Mr. Richards, is that those admissions fall
10:32AM 16 squarely under the protections of paragraph 21E, and thus they
10:32AM 17 would not be used against Mr. Akau to determine his Sentencing
10:32AM 18 Guideline range or relevant conduct or anything of that nature.
10:32AM 19 So I believe it is fully covered by the plea agreement.

10:32AM 20 THE COURT: Okay. All right, I appreciate that
10:32AM 21 clarification. We will get into the body of the plea agreement
10:32AM 22 in just a minute, I promise you.

10:32AM 23 Before we do that, Mr. Akau, there are just a couple
10:32AM 24 more questions that I want to ask you, the first of which is:
10:32AM 25 Do you understand, sir, that any stipulations in the plea

10:32AM 1 agreement are stipulations that you've reached with the
10:32AM 2 Department of Justice or the U.S. Attorney's Office and that
10:32AM 3 the Court is specifically not bound by those stipulations?

10:33AM 4 THE DEFENDANT: I understand, Your Honor.

10:33AM 5 THE COURT: And now, Mr. Inciong, now we've gotten to
10:33AM 6 that point. If you would, please describe the essential terms
10:33AM 7 of the government's plea agreement with Mr. Akau to include any
10:33AM 8 appellate waiver provisions, please.

10:33AM 9 MR. INCIONG: Yes, Your Honor. The terms of the plea
10:33AM 10 agreement to which the government and Mr. Akau have entered are
10:33AM 11 as follows:

10:33AM 12 First, Mr. Akau acknowledges that he has been charged
10:33AM 13 in Counts 1, 16, 17, 18 and 19 of the superseding indictment in
10:33AM 14 this matter, which has also placed him on notice of the first,
10:33AM 15 second, fourth, and fifth forfeiture allegations.

10:33AM 16 The defendant has read the charges against him
10:33AM 17 contained in the superseding indictment and those charges have
10:33AM 18 been fully explained to him by Mr. Richards, his attorney. The
10:33AM 19 defendant fully understands the nature and elements of the
10:33AM 20 crimes with which he has been charged.

10:33AM 21 As part of the agreement, pursuant to the agreement,
10:33AM 22 the defendant will enter a voluntary plea of guilty to Count 1
10:34AM 23 of the superseding indictment which charges him with conspiring
10:34AM 24 to violate the racketeering laws of the United States,
10:34AM 25 specifically Title 18, U.S. Code, Section 1962(d), as in David.

10:34AM 1 In return, the government agrees to move to dismiss
10:34AM 2 Counts 16, 17, 18, and 19 of the superseding indictment as to
10:34AM 3 Mr. Akau after sentencing.

10:34AM 4 The government also has agreed not to file any
10:34AM 5 additional charges against the defendant for attempted murder
10:34AM 6 or his participation in any murder for hire scheme to the
10:34AM 7 extent those are now known to the government.

10:34AM 8 The defendant agrees that this memorandum of plea
10:34AM 9 agreement shall be filed and become part of the record in this
10:34AM 10 case.

10:34AM 11 The defendant entered this plea because he is in fact
10:34AM 12 guilty of conspiring to violate the racketeering laws of the
10:34AM 13 United States as charged in Count 1 of the superseding
10:34AM 14 indictment and agrees that his plea is voluntary and not the
10:34AM 15 result of any force or threats.

10:35AM 16 The defendant understands the maximum penalties which
10:35AM 17 were recited a few minutes ago that apply to this particular
10:35AM 18 charge. As indicated, there is a forfeiture provision on
10:35AM 19 paragraph 7C at page 4, but there is no applicable specific
10:35AM 20 forfeiture at this time.

10:35AM 21 The Court could also award restitution pursuant to
10:35AM 22 Title 18, U.S. Code, Section 3663A if appropriate as well.

10:35AM 23 There are a number of factual stipulations, which I
10:35AM 24 will address later, which begin at page 5 on paragraph 8 of the
10:35AM 25 plea agreement. Those continue on to page 6, 7, 8, 9 and

10:35AM 1 concludes on the top of page 10.

10:35AM 2 There are a number of sentencing stipulations as well.

10:36AM 3 But before I address those, I should also note to the Court

10:36AM 4 that the parties agree that the charge to which the defendant

10:36AM 5 is pleading guilty adequately reflects the seriousness of the

10:36AM 6 actual offense behavior and that accepting this plea agreement

10:36AM 7 would not undermine any statutory purposes of sentencing.

10:36AM 8 As far as stipulations, the parties stipulate to the

10:36AM 9 facts set forth in paragraph 8 of the plea agreement. Also, as

10:36AM 10 of the date of this plea agreement, it is expected that the

10:36AM 11 defendant will enter a plea of guilty prior to the commencement

10:36AM 12 of trial, will truthfully admit his involvement in the offense

10:36AM 13 and related conduct, and will not engage in conduct that is

10:36AM 14 inconsistent with such acceptance of responsibility. If all of

10:36AM 15 those events occur, and the defendant's acceptance of

10:36AM 16 responsibility continues through the date of sentencing, a

10:36AM 17 downward adjustment of minus two levels for acceptance of

10:36AM 18 responsibility will be appropriate pursuant to Guideline

10:36AM 19 Section 3E1.1, subparagraph A, and Application Note 3.

10:37AM 20 The U.S. attorney also agrees that Mr. Akau's

10:37AM 21 agreement to enter into a guilty plea constitutes notice of

10:37AM 22 intent to plead guilty in a timely manner, so as to permit the

10:37AM 23 government to avoid preparing for trial as to Mr. Akau.

10:37AM 24 Accordingly, the U.S. Attorney anticipates moving in the

10:37AM 25 government's sentencing statement for an additional one-level

10:37AM 1 reduction in sentencing pursuant to Guideline Section 3E1.1,
10:37AM 2 subparagraph B, subparagraph two, if the defendant is otherwise
10:37AM 3 eligible.

10:37AM 4 The defendant understands however that notwithstanding
10:37AM 5 those present intentions, and still within the parameters of
10:37AM 6 this plea agreement, the prosecution reserves its right to,
10:37AM 7 one, argue to the contrary in the event that new information
10:37AM 8 relating to those issues is received prior to sentencing, and,
10:37AM 9 number two, to call and examine witnesses on those issues in
10:37AM 10 the event that either U.S. Probation finds to the contrary of
10:37AM 11 the prosecution's intentions or that the Court requests
10:38AM 12 evidence be presented on those issues.

10:38AM 13 Also, the parties agree and stipulate that
10:38AM 14 notwithstanding the parties' agreement herein, the Court is not
10:38AM 15 bound by any stipulation entered into by the parties but may,
10:38AM 16 with the aid of the presentence report, determine any facts
10:38AM 17 relevant to sentencing. The parties also understand that the
10:38AM 18 Court's rejection of any stipulation between the parties does
10:38AM 19 not constitute a refusal to accept this plea agreement since
10:38AM 20 the Court is expressly not bound by any stipulations between
10:38AM 21 the parties.

10:38AM 22 The parties do represent, Your Honor, that as of the
10:38AM 23 date of this agreement there are no material facts in dispute.

10:38AM 24 Ordinarily, Mr. Akau would have the right to appeal or
10:38AM 25 collaterally review his sentence and conviction. The defendant

10:38AM 1 understands though that he is knowingly and voluntarily waiving
10:38AM 2 his right to appeal in this case pursuant to the plea
10:38AM 3 agreement, except as indicated in subparagraph B of paragraph
10:39AM 4 13. That includes his conviction and sentence within the
10:39AM 5 guideline range as determined by the Court at the time of
10:39AM 6 sentencing, as well as any lawful restitution or forfeiture
10:39AM 7 order imposed or the manner in which the sentence, restitution
10:39AM 8 or forfeiture order was determined on any ground whatsoever in
10:39AM 9 exchange for concessions made by the prosecution in this plea
10:39AM 10 agreement. The defendant does understand that this waiver
10:39AM 11 includes the right to assert any and all legally waivable
10:39AM 12 claims.

10:39AM 13 The defendant also waives the right to challenge his
10:39AM 14 conviction or sentence or the manner in which it was determined
10:39AM 15 in any collateral attack including, but not limited to, a
10:39AM 16 motion brought under Title 28, U.S. Code, Section 2255, except
10:39AM 17 that the defendant may make such a challenge, one, as to the
10:39AM 18 terms indicated in subparagraph B, which I'll address in a
10:39AM 19 minute, or two, based on a claim of ineffective assistance of
10:39AM 20 counsel.

10:39AM 21 In other words, the defendant is waiving his rights to
10:39AM 22 appeal and collaterally attack in this case except for two
10:40AM 23 limited circumstances. The first being that if the Court would
10:40AM 24 impose a sentence greater than that as specified in the
10:40AM 25 applicable guideline range that is determined by the Court to

10:40AM 1 the defendant, based on the facts in this case, Mr. Akau would
10:40AM 2 retain his right to appeal the portion of his sentence greater
10:40AM 3 than the applicable guideline range. And as indicated also, he
10:40AM 4 would retain his right to appeal or collaterally attack any
10:40AM 5 claim that he believes he has based on ineffective assistance
10:40AM 6 of counsel.

10:40AM 7 The prosecution does retain its right to appeal the
10:40AM 8 sentence and the manner in which it was determined on any
10:40AM 9 grounds stated in Title 18, U.S. Code, Section 3742(b).

10:40AM 10 There is a financial disclosure provision as part of
10:40AM 11 this plea agreement wherein Mr. Akau is agreeing to fully
10:40AM 12 disclose all assets in which he has any interest or which he
10:40AM 13 exercises control, either directly or indirectly, including any
10:41AM 14 assets held by a spouse, nominee, or third party.

10:41AM 15 The defendant understands that the U.S. Probation
10:41AM 16 Office will conduct a presentence investigation that will
10:41AM 17 require the defendant to complete a comprehensive financial
10:41AM 18 statement. To avoid the requirement of the defendant
10:41AM 19 completing financial statements for both the U.S. Probation
10:41AM 20 Office and the government, the defendant has agreed to
10:41AM 21 truthfully complete a financial statement provided to him by
10:41AM 22 the U.S. Attorney's Office. In it the defendant agrees to
10:41AM 23 complete the disclosure statement and provide it to the U.S.
10:41AM 24 Probation Office within the time frame required by the officer
10:41AM 25 assigned to the defendant's case.

10:41AM 1 The defendant understands that the U.S. Probation
10:41AM 2 Office will in turn provide a copy of the completed financial
10:41AM 3 statement to the U.S. Attorney's office. The defendant agrees
10:41AM 4 to provide written updates to both the U.S. Probation Office
10:41AM 5 and the U.S. Attorney's Office regarding any material change in
10:41AM 6 circumstances which occur prior to sentencing. The defendant's
10:42AM 7 failure to timely and accurately complete and sign the
10:42AM 8 financial statement and any updates in addition to any other
10:42AM 9 penalty or remedy constitute a failure to accept responsibility
10:42AM 10 under Guideline Section 3E1.1.

10:42AM 11 As part of that financial disclosure agreement, the
10:42AM 12 defendant has also expressly authorized the U.S. Attorney's
10:42AM 13 Office to obtain his credit report.

10:42AM 14 Finally, prior to sentencing, the defendant agrees to
10:42AM 15 notify the financial litigation office of the U.S. Attorney's
10:42AM 16 Office, before making any transfer of an interest in any
10:42AM 17 property with a value exceeding \$1,000, either owned directly
10:42AM 18 or indirectly, individually or jointly held by defendant,
10:42AM 19 including any interest held or owned under any name, including
10:42AM 20 trusts, partnerships, and corporations.

10:42AM 21 In regard to imposition of sentence, the defendant
10:42AM 22 understands that the District Court in imposing his sentence
10:42AM 23 will consider the provisions of the Sentencing Guidelines; that
10:42AM 24 there was no promise or guarantee as to the applicability or
10:43AM 25 non-applicability of those guidelines.

10:43AM 1 The defendant also understands that this plea
10:43AM 2 agreement will not be accepted or rejected by the Court until
10:43AM 3 it has had an opportunity to consider the presentence report
10:43AM 4 that will be prepared in this case.

10:43AM 5 The defendant understands that the Court will not
10:43AM 6 accept an agreement unless the Court determines that the
10:43AM 7 remaining charge adequately reflects the seriousness of the
10:43AM 8 actual offense behavior and that accepting the plea agreement
10:43AM 9 would not undermine any statutory purposes of sentencing.

10:43AM 10 By entering this plea agreement the defendant is
10:43AM 11 waiving a number of important trial rights, both constitutional
10:43AM 12 and otherwise, including the right to have a speedy trial and
10:43AM 13 to have his case heard by a jury of 12 peers.

10:43AM 14 The defendant also understands that he would have a
10:43AM 15 privilege against self-incrimination so that he could decline
10:43AM 16 to testify and that no inference of guilt could be drawn from
10:43AM 17 his refusal to testify.

10:44AM 18 The defendant understands that by pleading guilty, he
10:44AM 19 is waiving all of the rights set forth in this paragraph and
10:44AM 20 that his attorney has explained those rights to him along with
10:44AM 21 the consequences of the waiver of those rights.

10:44AM 22 In regard to use of plea statements, Your Honor, if
10:44AM 23 after signing the agreement the defendant decides not to plead
10:44AM 24 guilty as provided herein, or if the defendant pleads guilty
10:44AM 25 but subsequently makes a motion before this Court to withdraw

10:44AM 1 his guilty plea and the Court would grant that motion, the
10:44AM 2 defendant agrees that any admission of guilt that he makes by
10:44AM 3 signing this agreement or that he make while pleading as set
10:44AM 4 forth in this plea agreement may be used against him in a
10:44AM 5 subsequent trial if the defendant later proceeds to trial. The
10:44AM 6 defendant voluntarily, knowingly, and intelligently waives any
10:44AM 7 protections afforded by Rule 11(f) of the Federal Rules of
10:44AM 8 Criminal Procedure and Rule 410 of the Federal Rules of
10:44AM 9 Evidence regarding the use of statements made in this agreement
10:44AM 10 or during the course of pleading guilty when or if the guilty
10:44AM 11 plea is later withdrawn. The only exception to this paragraph
10:45AM 12 is where the defendant fully complies with this agreement but
10:45AM 13 the Court nonetheless rejects it. Under those circumstances,
10:45AM 14 the United States may not use those statements against the
10:45AM 15 defendant for any purpose.

10:45AM 16 Lastly, the defendant understands that the prosecution
10:45AM 17 will apprise the Court and the U.S. Probation Officer of the
10:45AM 18 nature, scope, and extent of the defendant's conduct regarding
10:45AM 19 the charges against him, related matters, and any matters in
10:45AM 20 aggravation or mitigation which are relevant to sentencing.

10:45AM 21 There is a cooperation provision pursuant to this plea
10:45AM 22 agreement, Your Honor. The defendant agrees that he will fully
10:45AM 23 cooperate with the United States, which includes agreeing to
10:45AM 24 testifying truthfully at any and all trials, hearings, or any
10:45AM 25 other proceedings at which the prosecution requests him to

10:45AM 1 testify, including but not limited to any grand jury
10:45AM 2 proceedings, trial proceedings involving co-defendants and
10:45AM 3 others charged later in this investigation, sentencing
10:46AM 4 hearings, and related civil proceedings.

10:46AM 5 The defendant also agrees to be available to speak
10:46AM 6 with law enforcement officials and representatives of the
10:46AM 7 U.S. Attorney's Office at any time and to give truthful and
10:46AM 8 complete answers at such meetings, but understands he may have
10:46AM 9 counsel present at those conversations.

10:46AM 10 Defendant agrees that he will not assert any privilege
10:46AM 11 to refuse to testify at any grand jury, trial, or other
10:46AM 12 proceeding, involving or related to the crimes charged in this
10:46AM 13 superseding indictment or any subsequent charges related to
10:46AM 14 this investigation, at which the prosecution requests him to
10:46AM 15 testify.

10:46AM 16 The defendant also understands that his sentencing
10:46AM 17 date may be delayed based on the government's need for his
10:46AM 18 continued cooperation, and agrees not to object to any
10:46AM 19 continuances of the defendant's sentencing date sought by the
10:46AM 20 United States.

10:46AM 21 Subparagraph E is the paragraph I addressed earlier.
10:46AM 22 Your Honor, pursuant to Section 1B1.8(a) in which the
10:46AM 23 defendant's admissions made under proffer may not be used
10:47AM 24 against him in any way in determining his sentence, relevant
10:47AM 25 conduct, and so forth. I should also add that it is the

10:47AM 1 government's view that those statements provided against his
10:47AM 2 own interest, which are included in the factual basis, are in
10:47AM 3 the government's view part of his cooperation and will be
10:47AM 4 addressed and brought to the Court's attention in the form of a
10:47AM 5 5K motion, if and when that time is appropriate.

10:47AM 6 In the event that the defendant does not breach any of
10:47AM 7 the terms of this agreement but the Court nonetheless refuses
10:47AM 8 to accept the agreement after the defendant has made statements
10:47AM 9 to law enforcement authorities, the prosecution agrees not to
10:47AM 10 use those statements in its case-in-chief in the trial of the
10:47AM 11 defendant in this matter.

10:47AM 12 The defendant understands, however, that this does not
10:47AM 13 bar the use of information and evidence derived from said
10:47AM 14 statements or prohibit the use of the statements by the
10:47AM 15 prosecution in cross-examination or rebuttal.

10:48AM 16 Pursuant to Guideline Section 5K1.1 and Rule 35(b) of
10:48AM 17 the Federal Rules of Criminal Procedure, the prosecution may
10:48AM 18 move the Court to depart from the guidelines on the ground that
10:48AM 19 defendant provided substantial assistance to authorities in the
10:48AM 20 investigation or prosecution of another person who has
10:48AM 21 committed an offense. The defendant understands, however, that
10:48AM 22 the decision as to whether to make such a request or motion
10:48AM 23 lies entirely within the discretion of the prosecution.

10:48AM 24 This agreement does not require the prosecution to
10:48AM 25 make such a request or motion.

10:48AM 1 The agreement confers neither any right upon the
10:48AM 2 defendant to have the prosecution make such a request for a
10:48AM 3 motion, nor any remedy to the defendant in the event the
10:48AM 4 prosecution fails to make such a request or motion.

10:48AM 5 Even in the event that the prosecution makes such a
10:48AM 6 request or motion, the Court may refuse to depart from the
10:48AM 7 guidelines or to impose a sentence below the minimum level if
10:48AM 8 applicable established by statute, as the Court has final
10:49AM 9 discretion over any such motion.

10:49AM 10 The defendant and his attorney acknowledge that, apart
10:49AM 11 from any written agreements, if applicable, no threats,
10:49AM 12 promises, agreements or conditions have been entered into by
10:49AM 13 the parties other than those set forth in this agreement, to
10:49AM 14 induce the defendant to plead guilty. Apart from any written
10:49AM 15 proffer agreements, this agreement supersedes all prior
10:49AM 16 promises, agreements or conditions between the parties.

10:49AM 17 To become effective, this plea agreement must be
10:49AM 18 signed by all signatories; that has been done. Because of the
10:49AM 19 defendant's incarceration and the pandemic, it is on two
10:49AM 20 separate pages, Your Honor. The government's original
10:49AM 21 signatures are shown on the first page 22 (verbatim), which is
10:49AM 22 dated today's date, June 8, 2021. The defendant's signature,
10:49AM 23 along with his attorney's signature, are on the second page 22
10:49AM 24 which is the final page of this plea agreement.

10:49AM 25 Finally, the parties agree that should the Court

10:50AM 1 refuse to accept this plea agreement, it is null and avoid at
10:50AM 2 that point and neither party would be bound thereto. Those are
10:50AM 3 the terms of the plea agreement, Your Honor.

10:50AM 4 THE COURT: Mr. Richards, do you agree that AUSA
10:50AM 5 Inciong has accurately described the essential terms of your
10:50AM 6 client's plea agreement with the government?

10:50AM 7 MR. RICHARDS: Yes.

10:50AM 8 THE COURT: Mr. Akau, there are some important trial
10:50AM 9 and trial related rights that you would be waiving by virtue of
10:50AM 10 proceeding with this plea. Those rights are largely described
10:50AM 11 at paragraphs 17 and 18 of this plea agreement. I'm going to
10:50AM 12 go over those rights with you now, the first of which, sir, is:

10:50AM 13 Do you understand that under the constitution and laws
10:50AM 14 of the United States, you do have the right not to plead guilty
10:50AM 15 and to proceed to a trial, including a trial by jury, on the
10:50AM 16 charges brought against you?

10:50AM 17 THE DEFENDANT: Yes, I understand, Your Honor.

10:50AM 18 THE COURT: Mr. Akau, do you further understand that
10:51AM 19 if you were to proceed to trial, you would be presumed
10:51AM 20 innocent, which means that the government would have the burden
10:51AM 21 of proving your guilt to a jury beyond a reasonable doubt and
10:51AM 22 that at no time would you have the burden of proving you are
10:51AM 23 not guilty?

10:51AM 24 THE DEFENDANT: I understand, Your Honor.

10:51AM 25 THE COURT: Do you understand further that in order to

10:51AM 1 be found guilty at a trial, a jury of 12 persons from the local
10:51AM 2 community would have to find your guilt not only beyond a
10:51AM 3 reasonable doubt but they would have to do unanimously?

10:51AM 4 THE DEFENDANT: I understand, Your Honor.

10:51AM 5 THE COURT: Do you understand that at all stages of
10:51AM 6 the prosecution, which includes trial, you have the right to
10:51AM 7 the assistance of counsel, as you do here this morning, and if
10:51AM 8 at any point in time you could not afford counsel one would be
10:51AM 9 appointed for you by the Court at no cost to you?

10:51AM 10 THE DEFENDANT: I understand, Your Honor.

10:51AM 11 THE COURT: Mr. Akau, do you further understand that
10:51AM 12 at any trial you would have the right to see and to hear all of
10:51AM 13 the government's evidence and witnesses and to have those
10:52AM 14 witnesses questioned by your own attorney?

10:52AM 15 THE DEFENDANT: I understand, Your Honor.

10:52AM 16 THE COURT: Can you also confirm you understand that
10:52AM 17 at any trial you could object to any of the evidence offered by
10:52AM 18 the United States, and you could present evidence of your own
10:52AM 19 in your case in chief including through witness testimony that
10:52AM 20 is compelled through the Court's subpoena power, if that were
10:52AM 21 necessary?

10:52AM 22 THE DEFENDANT: I understand, Your Honor.

10:52AM 23 THE COURT: Do you understand that at any trial you
10:52AM 24 would also have the right to testify on your own behalf, if you
10:52AM 25 chose to do that; but if you chose not to, no inference or

10:52AM 1 suggestion of your guilt could be drawn by the jury by the fact
10:52AM 2 that you chose not to testify?

10:52AM 3 THE DEFENDANT: I understand, Your Honor.

10:52AM 4 THE COURT: Do you understand, Mr. Akau, that by
10:52AM 5 entering a plea of guilty here this morning, and if I were to
10:52AM 6 accept that plea, there will be no trial and you will have
10:52AM 7 given up each of these trial related rights that I just
10:52AM 8 mentioned?

10:52AM 9 THE DEFENDANT: I understand, Your Honor.

10:52AM 10 THE COURT: Do you as well understand, sir, that to
10:53AM 11 proceed with your plea, you will also need to give up your
10:53AM 12 right not to incriminate yourself, and the reason for that is
10:53AM 13 I'm about to ask you a few questions about what you did that
10:53AM 14 makes you guilty of Count 1, and those questions will need to
10:53AM 15 be answered?

10:53AM 16 THE DEFENDANT: Yes, Your Honor, I understand.

10:53AM 17 THE COURT: Do you have any -- Mr. Akau, do you have
10:53AM 18 questions at all regarding any of these rights that I just
10:53AM 19 mentioned?

10:53AM 20 THE DEFENDANT: I do not at this time, Your Honor.

10:53AM 21 THE COURT: And knowing these rights, do you still
10:53AM 22 wish to proceed with your plea?

10:53AM 23 THE DEFENDANT: Yes, I do Your Honor.

10:53AM 24 THE COURT: Are you a United States citizen, Mr. Akau?

10:53AM 25 THE DEFENDANT: Yes, I am. Your Honor.

10:53AM 1 THE COURT: As a United States citizen then you need
10:53AM 2 to understand that the charge brought against you, Count 1 of
10:53AM 3 the indictment, is considered a felony offense. If your plea
10:53AM 4 is accepted and you are adjudged guilty of that offense, that
10:53AM 5 adjudication by the Court could deprive you of some valuable
10:53AM 6 civil rights. Those civil rights include the right to vote,
10:53AM 7 the right to hold public office, the right to sit on a jury, as
10:54AM 8 well as the right to possess or bear a firearm; do you
10:54AM 9 understand that as well?

10:54AM 10 THE DEFENDANT: Yes, Your Honor, I understand.

10:54AM 11 THE COURT: With regard to sentencing, United States
10:54AM 12 law establishes detailed sentencing guidelines that apply to
10:54AM 13 those who are convicted of, which include those who plead
10:54AM 14 guilty to federal crimes. The sentencing judge, in this case
10:54AM 15 most likely myself, must consider those sentencing guidelines
10:54AM 16 and additionally must consider the statutory sentencing factors
10:54AM 17 that are set forth at 18 United States Code, Section 3553(a).

10:54AM 18 Although the sentencing judge must consider the
10:54AM 19 sentencing guidelines, those guidelines are what the name might
10:54AM 20 imply to you. They are guidelines which means that they are
10:54AM 21 advisory on this Court only. Do you understand that?

10:54AM 22 THE DEFENDANT: Yes, Your Honor, I understand.

10:54AM 23 THE COURT: Mr. Akau, have you discussed with
10:54AM 24 Mr. Richards how the sentencing guidelines might apply to your
10:54AM 25 case?

10:54AM 1 THE DEFENDANT: Yes, I have Your Honor.

10:54AM 2 THE COURT: And I always am careful to use the term
10:55AM 3 "might" and that's because as I sit here today I cannot with
10:55AM 4 precision tell you how the guidelines will apply to your case.
10:55AM 5 I will not be able to do that until after a presentence
10:55AM 6 investigation and investigation report have been completed and
10:55AM 7 after both Mr. Inciong and Mr. Richards have an opportunity to
10:55AM 8 provide me with any comments on or objections to the contents
10:55AM 9 of that report that they may have. Do you understand that
10:55AM 10 process?

10:55AM 11 THE DEFENDANT: Yes, Your Honor, I understand.

10:55AM 12 THE COURT: Now approximately three to four months
10:55AM 13 from now there will come a time when I'm able to determine with
10:55AM 14 some precision how the guidelines apply to your case and how
10:55AM 15 the 3553(a) statutory factors likewise apply. When I consider
10:55AM 16 both of those items, I could impose a sentence that is either
10:55AM 17 more or less severe than what the guidelines call for. Do you
10:55AM 18 understand that?

10:55AM 19 THE DEFENDANT: Yes, Your Honor, I understand.

10:55AM 20 THE COURT: Now, Mr. Akau if I were to impose a
10:55AM 21 sentence that is more severe than what you expect or more
10:56AM 22 severe than what the guidelines call for, do you realize and
10:56AM 23 understand that you will still be bound by both your plea as
10:56AM 24 well as your plea agreement and at least on that basis will
10:56AM 25 have no right to withdraw from either?

10:56AM 1 THE DEFENDANT: Yes, Your Honor, I understand.

10:56AM 2 THE COURT: Do you understand that despite any

10:56AM 3 discussions you may have had with Mr. Richards, with

10:56AM 4 Mr. Inciong, or with anyone else regarding the type or the

10:56AM 5 duration of the sentence you are likely to receive, or

10:56AM 6 regarding any sentencing recommendation that they may wish to

10:56AM 7 provide to me, I am not bound by those discussions nor is the

10:56AM 8 Court bound by any sentencing recommendations provided to it,

10:56AM 9 and I could impose a sentence that is more severe than what you

10:56AM 10 expect up to the maximum permitted by law?

10:56AM 11 THE DEFENDANT: Yes, Your Honor, I understand.

10:56AM 12 THE COURT: Mr. Akau, has anyone made any promises to

10:56AM 13 you regarding what your sentence will be?

10:56AM 14 THE DEFENDANT: Only to what was on the plea

10:56AM 15 agreement, Your Honor.

10:56AM 16 THE COURT: Well, the plea agreement doesn't specify

10:56AM 17 any kind of sentence at all. Do you understand that?

10:57AM 18 MR. RICHARDS: Your Honor, I did promise him there is

10:57AM 19 no mandatory minimum and a cap of 20 years, so that's the

10:57AM 20 promise I made.

10:57AM 21 THE COURT: Okay. So you're talking about what the

10:57AM 22 statutory penalties that you face -- we went over this a few

10:57AM 23 minutes ago -- the potential penalties that you face for

10:57AM 24 pleading guilty to this particular count; is that what you're

10:57AM 25 referring to, sir?

10:57AM 1 THE DEFENDANT: Yes, sir, Your Honor. That's what I'm
10:57AM 2 referring to.

10:57AM 3 THE COURT: All right, has anyone made any other
10:57AM 4 promises to you regarding what your sentence will be?

10:57AM 5 THE DEFENDANT: No, Your Honor.

10:57AM 6 THE COURT: Do you understand, Mr. Akau, that at the
10:57AM 7 time of sentencing there is no limitation on the information
10:57AM 8 that I can consider regarding your background, your character,
10:57AM 9 and your conduct except that the information I use must be
10:57AM 10 sufficiently reliable?

10:57AM 11 MR. RICHARDS: Your Honor --

10:57AM 12 THE DEFENDANT: Yes, Your Honor.

10:57AM 13 MR. RICHARDS: -- are you excluding the -- you
10:57AM 14 wouldn't consider the material covered by 21E, correct?

10:57AM 15 THE COURT: I mean, we've been through this four
10:58AM 16 times, haven't we?

10:58AM 17 MR. RICHARDS: Well, I just wanted the Court to know I
10:58AM 18 had an experience recently in another matter where cooperation
10:58AM 19 statements were considered, and I just didn't want to make a
10:58AM 20 misunderstanding on that; that was why I clarified it.

10:58AM 21 THE COURT: I understand the agreement that you've
10:58AM 22 reached with the U.S. Attorney's Office with respect to 21E.

10:58AM 23 MR. RICHARDS: Thank you.

10:58AM 24 THE COURT: Mr. Akau, do you, sir, understand if a
10:58AM 25 term of imprisonment is imposed as part of your sentence, a

10:58AM 1 term of what we call supervised release is very likely to
10:58AM 2 follow, and if you were to violate any of the conditions of
10:58AM 3 supervised release, additional prison time could be imposed?

10:58AM 4 THE DEFENDANT: Yes, Your Honor, I understand.

10:58AM 5 THE COURT: Are you aware as well that in the federal
10:58AM 6 system parole has been abolished and so, from a practical
10:58AM 7 standpoint, what that means is if a term of imprisonment is
10:59AM 8 imposed as part of your sentence you will not be released early
10:59AM 9 on parole?

10:59AM 10 THE DEFENDANT: I understand, Your Honor.

10:59AM 11 THE COURT: And do you as well understand that as part
10:59AM 12 of any final judgment in this case, the Court could order you
10:59AM 13 to pay a fine as well as a special assessment?

10:59AM 14 THE DEFENDANT: Yes, Your Honor, I understand.

10:59AM 15 THE COURT: Likewise, there is at least the potential
10:59AM 16 for restitution and forfeiture of specific property although,
10:59AM 17 as I understand it from the government's representation thus
10:59AM 18 far, there is no specific item or amount that is called for at
10:59AM 19 this time.

10:59AM 20 THE DEFENDANT: Yes, Your Honor, I understand.

10:59AM 21 THE COURT: Mr. Akau, there are some facts now that we
10:59AM 22 need to get into a bit; those are largely set forth at
10:59AM 23 paragraph 8 of your particular plea agreement. I need to be
10:59AM 24 sure in other words that you in fact committed the crime that
10:59AM 25 you have been charged with and that you are prepared to plead

11:00AM 1 guilty to of Count 1 of the indictment.

11:00AM 2 The first step in that process is to ask the

11:00AM 3 government's attorney to set forth the elements of that

11:00AM 4 particular count.

11:00AM 5 MR. INCIONG: Thank you, Your Honor. There are three

11:00AM 6 elements that the United States would have to prove beyond a

11:00AM 7 reasonable doubt if this matter proceeded to trial in regards

11:00AM 8 to Count 1 of the superseding indictment.

11:00AM 9 First, that there was an agreement between Mr. Akau

11:00AM 10 and at least one other person to commit a crime at least one

11:00AM 11 crime as charged in the superseding indictment. In this case

11:00AM 12 it's the violation of the racketeering laws.

11:00AM 13 Secondly, that the defendant became a member of the

11:00AM 14 conspiracy knowing of at least one of its objects and intending

11:00AM 15 to help accomplish it.

11:00AM 16 Thirdly, that at least one of the members of the

11:00AM 17 conspiracy performed at least one overt act for the purpose of

11:00AM 18 carrying out the conspiracy.

11:00AM 19 The government's position is that the object of the

11:00AM 20 conspiracy in this case, Your Honor, was to participate in the

11:01AM 21 affairs of an association in fact as defined by Title 18 United

11:01AM 22 States Code, Section 1962C. There are four what I'll refer to

11:01AM 23 as sub-elements that constitutes that particular crime; so I

11:01AM 24 would like to put those on the record as well as elements that

11:01AM 25 the government would have to prove beyond a reasonable doubt in

11:01AM 1 its case in chief.

11:01AM 2 First, there was an ongoing enterprise with some sort
11:01AM 3 of formal are informal framework for carrying out its
11:01AM 4 objectives consisting of a group of persons associated together
11:01AM 5 for a common purpose of engaging in a course of conduct.

11:01AM 6 Second, the defendant was employed by or associated
11:01AM 7 with the enterprise.

11:01AM 8 Third, that the defendant participated directly or
11:01AM 9 indirectly in the conduct of the affairs of the enterprise
11:01AM 10 through a pattern of racketeering activity or collection of
11:01AM 11 unlawful debt.

11:01AM 12 And, fourth, that the enterprise engaged in or its
11:02AM 13 activities in some way affected commerce between one state and
11:02AM 14 another state or between the United States and a foreign
11:02AM 15 country.

11:02AM 16 Those would be the elements required for the
11:02AM 17 government to prove beyond a reasonable doubt in this matter,
11:02AM 18 Your Honor.

11:02AM 19 THE COURT: Mr. Richards, do you have any disagreement
11:02AM 20 with Mr. Inciong's description of the elements of Count 1?

11:02AM 21 MR. RICHARDS: No.

11:02AM 22 THE COURT: Then I'll turn back to Mr. Inciong to
11:02AM 23 please describe the evidence that the government would offer in
11:02AM 24 this case if it were to proceed to trial.

11:02AM 25 MR. INCIONG: Yes, Your Honor. If this matter

11:02AM 1 proceeded to trial the government would provide evidence to
11:02AM 2 show the following:

11:02AM 3 That from at least in or about 2016 and continuing up
11:02AM 4 to including June of 2020, Mr. Norman L. Akau, III, the
11:02AM 5 defendant, while working at the direction of others in the
11:02AM 6 Miske Enterprise, along with others known and unknown, were
11:02AM 7 members and associates of the Miske Enterprise, and that those
11:02AM 8 members and associates of the Miske Enterprise operated
11:03AM 9 principally under the direction and protection of Michael J.
11:03AM 10 Miske, Jr. who used his power over members --

11:03AM 11 (Gap in audio transmission.)

11:03AM 12 Should I continue, Your Honor? I just want to make
11:03AM 13 sure we have everyone here.

11:03AM 14 MR. RICHARDS: The Court is on mute.

11:03AM 15 THE COURT: Thank you, Mr. Richards.

11:03AM 16 Mr. Akau, can you determine from anyone around you at
11:03AM 17 FDC on your end whether or not you will be permitted to
11:03AM 18 continue on this video connection beyond right now?

11:03AM 19 THE DEFENDANT: I can call the guard, Your Honor.

11:03AM 20 THE CLERK: Just to let you know, Judge Otake has an
11:03AM 21 11:00 hearing with FDC. Shelli is standing by and needs to
11:03AM 22 know when our hearing is going to finish. Would you know how
11:04AM 23 long more so I can let her know?

11:04AM 24 THE COURT: I don't know how much longer, but I
11:04AM 25 anticipate we will need about 15 minutes at least, I would

11:04AM 1 guess.

11:04AM 2 THE CLERK: Okay, let me check with her.

11:04AM 3 THE COURT: Can you see if they will stand by? Thank
11:04AM 4 you.

11:04AM 5 MR. RICHARDS: I'm happy to offer my Zoom, Your Honor,
11:04AM 6 if we need it.

11:04AM 7 THE COURT: It's not your Zoom, we have Zoom as well,
11:04AM 8 Mr. Richards. It's the FDC line. It's your client that won't
11:04AM 9 be permitted to join, whether it's our Zoom or yours.

11:04AM 10 THE CLERK: Okay, Judge, they will stand by.

11:04AM 11 THE COURT: Thank you very much.

11:04AM 12 Go ahead, Mr. Inciong, let's hopefully try to finish
11:04AM 13 this up before we need to accede the line to Judge Otake.

11:04AM 14 MR. INCIONG: Thank you, Your Honor. As I indicated,
11:04AM 15 the evidence would show that members and associates of the
11:04AM 16 Miske Enterprise operated principally under the direction and
11:04AM 17 protection of Michael J. Miske, Jr., who used his power over
11:05AM 18 members and associates of the Miske Enterprise, his reputation
11:05AM 19 for violence in the community, and the various corporate
11:05AM 20 entities under his control to enrich the members and associates
11:05AM 21 of the Miske Enterprise and to protect the criminal activities.
11:05AM 22 The evidence would show that Mr. Akau was not aware at all
11:05AM 23 times as to who was working for Miske as he took directions
11:05AM 24 from others who worked for Miske.

11:05AM 25 The evidence would show that the Miske Enterprise,

11:05AM 1 including its leadership, membership and associates,
11:05AM 2 constituted an enterprise as that term is defined in Title 18,
11:05AM 3 United States Code, Section 1961, subparagraph 4, that is, a
11:05AM 4 group of individuals and its entities associated in fact. The
11:05AM 5 evidence would show that the Miske Enterprise was engaged in,
11:05AM 6 and its activities affected, interstate commerce.

11:05AM 7 Those areas most germane to this particular case, Your
11:05AM 8 Honor, would be through the distribution of illegal drugs and
11:05AM 9 the use of firearms which are manufactured outside of the State
11:06AM 10 of Hawaii.

11:06AM 11 The Miske Enterprise, the evidence would show,
11:06AM 12 operated within the District of Hawaii and elsewhere and
11:06AM 13 constituted an ongoing organization whose members and
11:06AM 14 associates functioned as a continuing unit for a common purpose
11:06AM 15 of achieving the objectives of the Miske Enterprise.

11:06AM 16 The evidence would further show that beginning at
11:06AM 17 least in or about 2016, Mr. Akau and others, known and unknown,
11:06AM 18 being persons employed by and associated with the Miske
11:06AM 19 Enterprise, willfully and knowingly combined, conspired,
11:06AM 20 confederated, and agreed together and with each other to
11:06AM 21 violate the racketeering laws of the United States, that is, to
11:06AM 22 conduct and participate, directly and indirectly, in the
11:06AM 23 conduct of the affairs of the Miske Enterprise through a
11:06AM 24 pattern of racketeering activity, as that term is defined in
11:06AM 25 Title 18, U.S. Code, Section 1961, subparagraph 1 and

11:06AM 1 subparagraph 5, all within the parameters of Section 1962,
11:07AM 2 subparagraph D.

11:07AM 3 The evidence would show that the racketeering activity
11:07AM 4 to which Mr. Akau and others agreed included acts involving
11:07AM 5 attempted murder and murder for hire; the felonious trafficking
11:07AM 6 of controlled substances as alleged in Count 16 of the
11:07AM 7 superseding indictment; and acts involving robbery and firearms
11:07AM 8 relating to interference with interstate commerce as alleged in
11:07AM 9 Counts 17, 18 and 19 of the superseding indictment.

11:07AM 10 In regard to acts involving attempted murder and
11:07AM 11 murder for hire, the evidence would show that at various times
11:07AM 12 between in or around 2016 and 2017, Mr. Akau, along with other
11:07AM 13 members of the Miske Enterprise, were offered contracts to
11:07AM 14 commit and/or facilitate murder by Michael J. Miske, Jr. and
11:07AM 15 engaged in attempts to commit those murders as requested by
11:07AM 16 Miske. Mr. Akau was not specifically directed by Miske but was
11:07AM 17 instead directed by Wayne Miller who did report directly to
11:08AM 18 Miske.

11:08AM 19 Specifically in or around 2016 and 2017, the evidence
11:08AM 20 would show that Mr. Akau, while being directed by Wayne Miller,
11:08AM 21 accepted an offer from Miske to murder Victim-12 in exchange
11:08AM 22 for \$50,000. To carry out the murder, the evidence would show
11:08AM 23 Miller and Akau followed Victim-12, with the assistance of a
11:08AM 24 GPS tracking device that Miller placed on Victim-12's vehicle,
11:08AM 25 to a plate lunch restaurant on Sand Island in Honolulu. When

11:08AM 1 Victim-12 --

11:08AM 2 A VOICE: Hello, excuse me. Just for your information
11:08AM 3 there is an 11:00 appointment with Judge Otake next.

11:08AM 4 THE COURT: Yes, Judge Otake has agreed to stand down
11:08AM 5 until we are complete.

11:08AM 6 A VOICE: Thank you.

11:08AM 7 THE COURT: Mr. Inciong, go ahead.

11:08AM 8 MR. INCIONG: Thank you, Your Honor. The evidence
11:08AM 9 would show that when Victim-12 came out of the restaurant,
11:08AM 10 Mr. Akau, who was armed with a pistol, was about to pull the
11:08AM 11 trigger in an attempt to shoot and kill Victim-12 when Miller
11:09AM 12 ordered him to stand down and not shoot because Miller had been
11:09AM 13 unable to remove the GPS tracker he placed on Victim-12's
11:09AM 14 vehicle.

11:09AM 15 The evidence would also show that in or around 2016,
11:09AM 16 Mr. Akau was also offered \$50,000 by Miske, again through Wayne
11:09AM 17 Miller, this time to abduct Jonathan Fraser and transport him
11:09AM 18 to the north shore of Oahu where another individual would
11:09AM 19 commit Fraser's murder. After thinking over the offer and
11:09AM 20 discussing it with others, Mr. Akau declined to accept the
11:09AM 21 offer because Fraser was, quote, a kid.

11:09AM 22 In regards to offenses involving robbery and firearms
11:09AM 23 relating to interference with interstate commerce, the evidence
11:09AM 24 would show that at various times between in or around 2016 and
11:09AM 25 in or around 2018, Mr. Akau, along with other members of the

11:09AM 1 Miske Enterprise, engaged in and/or facilitated robberies.

11:09AM 2 Often the targets of these robberies were drug dealers.

11:10AM 3 For example, in or about 2016, Mr. Akau, along with

11:10AM 4 Jacob "Jake" Smith, Ashlin Akau, Harry Kauhi, Lance Bermudez

11:10AM 5 and at least one other individual participated in the robbery

11:10AM 6 of Victim-4, a suspected drug dealer, who was believed to be in

11:10AM 7 possession of a large quantity of methamphetamine. The group

11:10AM 8 traveled in two separate vehicles and forced the car in which

11:10AM 9 Victim-4 was a passenger to stop on North School Street in

11:10AM 10 Honolulu. Mr. Akau was in one of the vehicles and was dressed

11:10AM 11 to impersonate a plain clothes police officer. He exited his

11:10AM 12 vehicle while flashing a badge he obtained while working on the

11:10AM 13 film set of Hawaii Five-0. At the time Mr. Akau was armed with

11:10AM 14 a .38 caliber revolver and a .22 caliber pistol equipped with a

11:10AM 15 silencer in a backpack he was carrying. Smith, Bermudez and at

11:10AM 16 least one other individual, all armed with guns and wearing

11:10AM 17 masks were in the second vehicle, a black BMW 3 series sedan,

11:11AM 18 driven by Bermudez. While displaying his badge with a walkie

11:11AM 19 talkie in hand, Mr. Akau held Victim-4 and ordered him to a

11:11AM 20 nearby telephone pole. Mr. Akau then went to the trunk of the

11:11AM 21 vehicle and grabbed a blue Walmart bag filled with several

11:11AM 22 pounds of methamphetamine.

11:11AM 23 After the robbery, Mr. Akau, Mr. Smith, Ashlin Akau,

11:11AM 24 John B. Stancil, Harry Kauhi, and Lance Bermudez, along with at

11:11AM 25 least one other individual, all met at another location and

11:11AM 1 divided up the drugs amongst the groups.

11:11AM 2 In regard to offenses involving the felonious
11:11AM 3 trafficking of controlled substances, the evidence would show
11:11AM 4 that between in or around 2016 and continuing to at least in or
11:11AM 5 about August of 2018, Mr. Akau conspired with others to
11:12AM 6 distribute and possess, with intent to distribute, controlled
11:12AM 7 substances including methamphetamine.

11:12AM 8 For example, after the 2016 robbery of Victim-4, I've
11:12AM 9 just described which is reflected in subparagraph H, Mr. Akau
11:12AM 10 possessed his share of the stolen methamphetamine which was
11:12AM 11 approximately several ounces with the intend to further
11:12AM 12 distribute those drugs to another person. That would be the
11:12AM 13 summary of the evidence the United States would produce at
11:12AM 14 trial, Your Honor.

11:12AM 15 THE COURT: The details of that robbery of Victim-4 is
11:12AM 16 actually set forth in paragraph 8F, not 8H; is that correct?

11:12AM 17 MR. INCIONG: Thank you. Yes, Your Honor, my mistake.
11:12AM 18 Paragraph 8, subparagraph F, yes.

11:12AM 19 THE COURT: Mr. Akau, do you understand the evidence
11:12AM 20 that the government would offer in this case if it were to
11:13AM 21 proceed to trial?

11:13AM 22 THE DEFENDANT: Yes, Your Honor, I understand.

11:13AM 23 THE COURT: And do you agree, sir, that what the
11:13AM 24 government said you did is true?

11:13AM 25 THE DEFENDANT: Yes, Your Honor.

11:13AM 1 THE COURT: In your own words, Mr. Akau, please
11:13AM 2 describe what you did that makes you guilty of Count 1.

11:13AM 3 THE DEFENDANT: I'm guilty because I was involved in
11:13AM 4 those incidents, and I did participate in those counts, Your
11:13AM 5 Honor.

11:13AM 6 THE COURT: And that all occurred between 2016 and
11:13AM 7 2020, is that roughly your understanding as well?

11:13AM 8 THE DEFENDANT: Your Honor, it was actually 2016 to
11:13AM 9 about 2018, Your Honor.

11:13AM 10 THE COURT: Okay. And during that time frame you were
11:13AM 11 a member of a group of individuals that the government has
11:13AM 12 described as the Miske Enterprise?

11:14AM 13 THE DEFENDANT: Yes, Your Honor.

11:14AM 14 THE COURT: And that enterprise consisted of a number
11:14AM 15 of individuals to include Mr. Wayne Miller, Mr. Lance Bermudez,
11:14AM 16 and the other individuals described in paragraph 8?

11:14AM 17 THE DEFENDANT: Your Honor, yes. I was only
11:14AM 18 introduced through Wayne Miller who was my cousin. I was not
11:14AM 19 aware until this indictment who actually was involved in the
11:14AM 20 enterprise, Your Honor.

11:14AM 21 THE COURT: Okay. The events though that you were
11:14AM 22 engaged in specifically included these individuals though that
11:14AM 23 Mr. Inciong mentioned, correct?

11:14AM 24 THE DEFENDANT: Yes, Your Honor.

11:14AM 25 THE COURT: And the Miske Enterprise operated during

11:14AM 1 the time frame that you indicated at least 2016 --

11:14AM 2 (Audio interruption.)

11:14AM 3 Can you still hear me?

11:15AM 4 THE DEFENDANT: I hear you, yes, Your Honor. Correct.

11:15AM 5 THE COURT: And that enterprise operated under the
11:15AM 6 principal control, direction, and protection of Mr. Miske, Jr.?

11:15AM 7 THE DEFENDANT: Yes, Your Honor.

11:15AM 8 THE COURT: His first name being Michael, correct?

11:15AM 9 THE DEFENDANT: Correct.

11:15AM 10 THE COURT: And as part of this enterprise, is it fair
11:15AM 11 to say, Mr. Akau, that you had an agreement with others to
11:15AM 12 violate the racketeering laws of the United States including
11:15AM 13 through the manners and ways in which the government described,
11:15AM 14 those being attempted murder, murder for hire, drug trafficking
11:15AM 15 and robbery?

11:15AM 16 THE DEFENDANT: Yes, Your Honor.

11:15AM 17 THE COURT: And some of those events also included the
11:15AM 18 employment and use of firearms?

11:15AM 19 THE DEFENDANT: Yes, Your Honor.

11:15AM 20 THE COURT: The point of that, Mr. Akau, was to -- I
11:15AM 21 assume it was in part to achieve financial gain?

11:15AM 22 THE DEFENDANT: It was for financial gain, Your Honor.

11:15AM 23 THE COURT: Were there other goals beside financial
11:16AM 24 gain that you are aware of?

11:16AM 25 THE DEFENDANT: For my part, Your Honor, no. That's

11:16AM 1 what it was -- financial gain.

11:16AM 2 THE COURT: And through these acts that you engaged
11:16AM 3 in, you and others, those affected interstate and foreign
11:16AM 4 commerce the way Mr. Inciong indicated; is that true? For
11:16AM 5 example, the drugs that you stole in this incident that
11:16AM 6 Mr. Inciong describes from the 2018 time frame, those drugs
11:16AM 7 were drugs that were sourced from states and locations other
11:16AM 8 than Hawaii; is that fair?

11:16AM 9 THE DEFENDANT: That's fair, Your Honor, to assume
11:16AM 10 that, yes.

11:16AM 11 THE COURT: I think that was -- maybe I misstated it,
11:16AM 12 I said 2018 and it looks like it was maybe 2016, that time
11:16AM 13 frame.

11:16AM 14 THE DEFENDANT: Yes, Your Honor.

11:17AM 15 THE COURT: And similarly the firearms that were
11:17AM 16 employed in the ways that Mr. Inciong described were
11:17AM 17 manufactured outside of the State of Hawaii?

11:17AM 18 THE DEFENDANT: Yes, Your Honor, it was.

11:17AM 19 THE COURT: Thank you. One of the examples of the
11:17AM 20 activities that you engaged in with others, as part of this
11:17AM 21 Miske Enterprise, occurred in 2016, 2017 when you worked with
11:17AM 22 Mr. Miller?

11:17AM 23 THE DEFENDANT: Yes, Your Honor.

11:17AM 24 THE COURT: Can you tell me a little bit about that
11:17AM 25 incident -- a little bit more about that incident?

11:17AM 1 THE DEFENDANT: The one with Miller was -- I think it
11:17AM 2 was for the union rep; is that what we are speaking of?

11:17AM 3 THE COURT: This is the person that the government
11:17AM 4 described as Victim-12.

11:17AM 5 THE DEFENDANT: Yes, Your Honor. That was with -- he
11:18AM 6 asked me if I could help him. He had a situation in which he
11:18AM 7 fell out of favor with Mr. Miske, and he asked if I could help
11:18AM 8 him by taking care of that situation for him in which they talk
11:18AM 9 about Victim-12, Your Honor.

11:18AM 10 THE COURT: And this was a way for Mr. Miller to get
11:18AM 11 back in good graces with Mr. Miske?

11:18AM 12 THE DEFENDANT: Yes, Your Honor.

11:18AM 13 THE COURT: You were promised \$50,000 for your
11:18AM 14 assistance?

11:18AM 15 THE DEFENDANT: I was, Your Honor.

11:18AM 16 THE COURT: What was your understanding as far as
11:18AM 17 where that 50,000 was going to come from?

11:18AM 18 THE DEFENDANT: I assumed that my cousin was going to
11:18AM 19 get it from Mike, but I wasn't sure if that was actually the
11:18AM 20 truth.

11:18AM 21 THE COURT: That's what Mr. Miller told you?

11:18AM 22 THE DEFENDANT: Yes, Your Honor, that's what
11:18AM 23 Mr. Miller told me.

11:18AM 24 THE COURT: That Mr. Miske would be paying the \$50,000
11:19AM 25 to you for your help?

11:19AM 1 THE DEFENDANT: Yes, Your Honor.

11:19AM 2 THE COURT: And what did you do then to assist

11:19AM 3 Mr. Miller?

11:19AM 4 THE DEFENDANT: We followed Victim-12 to a plate lunch

11:19AM 5 place that's located in the Sand Island district, and once we

11:19AM 6 were there he wanted me to shoot that Victim-12 once he came

11:19AM 7 out of the restaurant. And when Victim-12 came out of the

11:19AM 8 restaurant -- excuse me, sorry.

11:19AM 9 THE COURT: No, go ahead.

11:19AM 10 THE DEFENDANT: When Victim-12 came out of the

11:19AM 11 restaurant, he told me to stand down because he couldn't pull

11:19AM 12 the tracking device that he placed on the vehicle off of the

11:19AM 13 vehicle; so that never happened, Your Honor.

11:19AM 14 THE COURT: You were prepared to fire, you had a

11:19AM 15 weapon to do that?

11:19AM 16 THE DEFENDANT: Yes, Your Honor, I did.

11:19AM 17 THE COURT: Had you brandished that weapon? Had you

11:20AM 18 drawn it out of wherever you had it?

11:20AM 19 THE DEFENDANT: No, I did not. It was in the

11:20AM 20 backpack.

11:20AM 21 THE COURT: All right. And did you have an

11:20AM 22 understanding as to why that victim was to be killed?

11:20AM 23 THE DEFENDANT: Yes, Your Honor. I was told that he

11:20AM 24 would be removed from the position of hiring for the jobs on

11:20AM 25 the docks.

11:20AM 1 THE COURT: Because he had a role in hiring?

11:20AM 2 THE DEFENDANT: They wanted to put the previous union
11:20AM 3 official that was currently in that position that was removed
11:20AM 4 from the position, they were going to put him back into that
11:20AM 5 seat.

11:20AM 6 THE COURT: Because what? Because that would help
11:20AM 7 Mr. Miske's business?

11:20AM 8 THE DEFENDANT: That would help the flow of jobs onto
11:20AM 9 the docks.

11:21AM 10 THE COURT: And another example I gather is this
11:21AM 11 \$50,000 -- another \$50,000 that you were offered to assist with
11:21AM 12 the kidnapping of Jonathan Fraser?

11:21AM 13 THE DEFENDANT: Yes, Your Honor.

11:21AM 14 THE COURT: Did that offer come to you from Mr. Miller
11:21AM 15 as well?

11:21AM 16 THE DEFENDANT: Yes, it did, Your Honor. Actually
11:21AM 17 that offer came before Victim-12's offer, Your Honor.

11:21AM 18 THE COURT: And in that situation your understanding
11:21AM 19 from Mr. Miller was that the \$50,000 would come from Mr. Miske?

11:21AM 20 THE DEFENDANT: Yes, Your Honor.

11:21AM 21 THE COURT: And your role would have been to -- I'm
11:21AM 22 sorry what?

11:21AM 23 THE DEFENDANT: My role was to pick up -- the guy was
11:21AM 24 going to get dropped off by Wayne Miller, and I would drive him
11:21AM 25 to the north shore in which someone else would take care of the

11:21AM 1 kid, and I refused. And because I refused he said, For the
11:22AM 2 same money, could you help me out with Victim-12? That's how
11:22AM 3 Victim-12 came into play for me, Your Honor.

11:22AM 4 THE COURT: Okay, I get it now. And the person that
11:22AM 5 you were supposed to drive to the north shore at Mr. Miller's
11:22AM 6 request, that was Jonathan Fraser?

11:22AM 7 THE DEFENDANT: Yes, Your Honor.

11:22AM 8 THE COURT: And he is the person that you referred to
11:22AM 9 as a kid?

11:22AM 10 THE DEFENDANT: Yes, Your Honor.

11:22AM 11 THE COURT: And lastly in 2016 you ended up assisting
11:22AM 12 others with the robbery of a person who you knew was a drug
11:22AM 13 dealer here in Honolulu; is that fair?

11:22AM 14 THE DEFENDANT: Yes, Your Honor, that is correct.

11:22AM 15 THE COURT: To do so you, impersonated a police
11:23AM 16 officer with respect to Victim-4?

11:23AM 17 THE DEFENDANT: Yeah, I wore a prop badge, got out of
11:23AM 18 the vehicle, and proceeded to rob Victim-4.

11:23AM 19 THE COURT: And you were armed at the time with
11:23AM 20 firearms?

11:23AM 21 THE DEFENDANT: I had a gun in the backpack that
11:23AM 22 remained in the car. I had no firearm when I got out of the
11:23AM 23 car.

11:23AM 24 THE COURT: And you ended up robbing Victim-4 of
11:23AM 25 several pounds of methamphetamine?

11:23AM 1 THE DEFENDANT: That is correct, Your Honor.

11:23AM 2 THE COURT: And you shared that methamphetamine with
11:23AM 3 the others who were with you during that encounter, and those
11:23AM 4 people included Mr. Bermudez; Ms. Akau, Ashlin Akau; and
11:23AM 5 Mr. Smith?

11:23AM 6 THE DEFENDANT: And there is a person that's not
11:23AM 7 mentioned in any of the paperwork that I gave the Walmart bag
11:24AM 8 to who lured me to this scheme of robbery, Your Honor.

11:24AM 9 THE COURT: So there were others that shared in the
11:24AM 10 methamphetamine that you stole from that drug dealer?

11:24AM 11 THE DEFENDANT: Yes, Your Honor.

11:24AM 12 THE COURT: The plea agreement mentions Mr. Bermudez,
11:24AM 13 Mr. Smith, Ms. Akau, Mr. Kauhi and Mr. Stancil, those were
11:24AM 14 among those that you included in this sharing?

11:24AM 15 THE DEFENDANT: Yeah, I would assume that's correct,
11:24AM 16 Your Honor.

11:24AM 17 THE COURT: And there were others?

11:24AM 18 THE DEFENDANT: Yes, Your Honor, that's what I'm
11:24AM 19 saying.

11:24AM 20 THE COURT: All right. Are both counsel then
11:24AM 21 satisfied that a factual basis for Mr. Akau's plea of guilty to
11:24AM 22 Count 1 has been established?

11:24AM 23 MR. INCIONG: Yes, the government is satisfied, Your
11:24AM 24 Honor. Thank you.

11:24AM 25 MR. RICHARDS: Yes, Your Honor, I believe the factual

11:25AM 1 basis has been established for the allegations in the
11:25AM 2 indictment and also the additional self-disclosed facts
11:25AM 3 pursuant to his obligation to answer government questions
11:25AM 4 truthfully in a proffer session.

11:25AM 5 THE COURT: With that then, Mr. Akau, I'll turn to
11:25AM 6 you, sir. As to Count 1 of the superseding indictment, how do
11:25AM 7 you plead: guilty or not guilty?

11:25AM 8 THE DEFENDANT: I plead guilty, Your Honor.

11:25AM 9 THE COURT: The Court finds that Mr. Akau understands
11:25AM 10 the nature of this morning's proceedings and is competent to
11:25AM 11 enter a knowing and informed plea. The Court further finds
11:25AM 12 that he has in fact entered a knowing, informed, and voluntary
11:25AM 13 plea of guilty to Count 1 of the superseding indictment, and he
11:25AM 14 has done so without coercion, force or threat.

11:25AM 15 The Court finds that Mr. Akau's plea of guilty is
11:25AM 16 supported by an independent basis in fact containing each of
11:25AM 17 the essential elements of Count 1 and that Mr. Akau understands
11:25AM 18 both the trial and civil rights that he would have in the
11:25AM 19 absence of pleading guilty, but he nonetheless knowingly and
11:25AM 20 voluntarily elects to waive those rights.

11:26AM 21 The Court finally finds that in pleading guilty,
11:26AM 22 Mr. Akau understands the factors that the Court will consider
11:26AM 23 at the time of sentencing, including the potential penalties
11:26AM 24 that are applicable to a violation of Count 1.

11:26AM 25 Mr. Akau, as you've acknowledged that you are in fact

11:26AM 1 guilty, I accept your guilty plea and adjudge you guilty as
11:26AM 2 charged to Count 1 of the superseding indictment. The Court
11:26AM 3 orders the plea agreement in this matter to be filed, but
11:26AM 4 reserves a determination of whether to accept it until after a
11:26AM 5 presentence investigation and investigation report have both
11:26AM 6 been completed.

11:26AM 7 May we get a sentencing date please?

11:26AM 8 THE CLERK: January 19, 2022 at 9:00.

11:26AM 9 THE COURT: Is that date and time acceptable with
11:26AM 10 counsel?

11:26AM 11 MR. INCIONG: Yes, that's fine with the government.
11:26AM 12 Thank you.

11:26AM 13 MR. RICHARDS: Your Honor, quick question. When the
11:26AM 14 Court -- is it standard practice for the Court -- (Inaudible
11:26AM 15 due to background noise)

11:26AM 16 THE COURT: I can't hear you, Mr. Richards. Standard
11:27AM 17 practice for what?

11:27AM 18 MR. RICHARDS: For the Court to withhold the
11:27AM 19 acceptance of the plea pending review of the PSR?

11:27AM 20 THE COURT: It is standard practice to determine
11:27AM 21 whether or not to accept the plea agreement until sentencing.

11:27AM 22 MR. RICHARDS: Okay. Not every practice is the same
11:27AM 23 in every district; that's why I was asking.

11:27AM 24 THE COURT: Yes, that's not unusual at all.

11:27AM 25 MR. RICHARDS: Okay, good. I just want to make sure

11:27AM 1 there was nothing about the plea that was unusual.

11:27AM 2 One last procedural question on the statements that

11:27AM 3 are not going to be considered. Does the Court flag those

11:27AM 4 through the PSR or is that something that it expects counsel to

11:27AM 5 do?

11:27AM 6 THE COURT: That is something that counsel can

11:27AM 7 collaborate with the probation department, and I'm sure

11:27AM 8 Mr. Inciong would naturally do that, given the agreement that

11:27AM 9 you all have reached. Or, independently Mr. Richards you'll

11:28AM 10 have an opportunity I'm sure to do that as probation will

11:28AM 11 undoubtedly want to talk with your client. And during those

11:28AM 12 discussions you can certainly mention it to them if they are

11:28AM 13 not aware of it by that time.

11:28AM 14 MR. RICHARDS: Okay, and the last question, Your

11:28AM 15 Honor, is: Is the Court aware that my client is in custody,

11:28AM 16 and if the plea agreement is going to be -- if you're going to

11:28AM 17 hold the consideration of the plea agreement, does the Court

11:28AM 18 find it necessary to file it on the public docket, these plea

11:28AM 19 agreements could be used offensively against people, and the

11:28AM 20 Court spent a lot of time going into allegations in the plea

11:28AM 21 agreement, and I know that typically they are not filed under

11:28AM 22 seal in your district. But would the Court consider

11:28AM 23 withholding the filing of the plea agreement until the Court is

11:28AM 24 going to accept it, so my client's safety and security cannot

11:28AM 25 be interfered with or harassed?

11:28AM 1 THE COURT: Mr. Inciong, does the government have any
11:28AM 2 position on filing the plea agreement under seal or not filing
11:29AM 3 it at all until we gather again for sentencing?

11:29AM 4 MR. INCIONG: We don't have an objection to either of
11:29AM 5 those things, Your Honor.

11:29AM 6 THE COURT: All right. So at your request, and
11:29AM 7 without objection -- at the defense's request and without
11:29AM 8 objection from the government, the Court will file the plea
11:29AM 9 agreement but do so under seal. Would that be acceptable?

11:29AM 10 Mr. Richards, would that accomplish your goal?

11:29AM 11 MR. RICHARDS: It would, Your Honor. And then if it's
11:29AM 12 ever shared with any counsel for any other defendant that they
11:29AM 13 be given instructions that it's under attorney eyes only, not
11:29AM 14 to send it to the jail like the other discovery that we have
11:29AM 15 had in this case.

11:29AM 16 THE COURT: All right. Well, that certainly would not
11:29AM 17 come from me; but in terms of sharing, if the government wishes
11:29AM 18 to do that, then I'm sure they would not do so with the seal in
11:29AM 19 place but would ask for it to be unsealed for a limited
11:29AM 20 purpose, if they were inclined to or if they were to seek that.
11:30AM 21 So we will go ahead and file that under seal for now. It's
11:30AM 22 always subject to unsealing obviously in part or in whole. So
11:30AM 23 we will have to revisit that down the road when we either get
11:30AM 24 to sentencing or at sentencing.

11:30AM 25 But, Mr. Richards, you did not respond to my question

11:30AM 1 about whether that date and time for sentencing is acceptable
11:30AM 2 to you.

11:30AM 3 MR. RICHARDS: Yes, Your Honor. If for some reason
11:30AM 4 I'm engaged in something, is the Court rigid on moving dates or
11:30AM 5 is that a drop-dead date?

11:30AM 6 THE COURT: No, not at all. We move sentencing dates
11:30AM 7 all the time. And there may be reason obviously in this case
11:30AM 8 to move it off January 19th or really any date that we pick.
11:30AM 9 There is no magic to that date. It's further out enough beyond
11:30AM 10 the current trial date that we thought it would be appropriate.
11:30AM 11 But we recognize entirely that this may not be the only --
11:30AM 12 there may not be just one continuance of that sentencing. We
11:31AM 13 may be looking at multiple continuances in light of the other
11:31AM 14 defendants that remain.

11:31AM 15 MR. RICHARDS: That date is fine for now, Your Honor.
11:31AM 16 Thank you.

11:31AM 17 THE COURT: That's all we can hope for for at least
11:31AM 18 for right now.

11:31AM 19 Anything else that I can assist the parties with? I'm
11:31AM 20 sure Judge Otake is chomping at the bit to get on to her video
11:31AM 21 line that we have now taken 30 minutes of.

11:31AM 22 MR. INCIONG: Nothing from the government. Thank you,
11:31AM 23 Your Honor.

11:31AM 24 MR. RICHARDS: No. Thank you, Your Honor.

11:31AM 25 THE COURT: Thank you both. Mr. Akau, thank you as

11:31AM 1 well. We'll hopefully get together in person for sentencing,
11:31AM 2 whether that's January or some future time. Thank you all. We
11:31AM 3 are in recess.

11:31AM 4 (Proceedings were concluded at 11:31 a.m.)

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1 COURT REPORTER'S CERTIFICATE

2 I, Gloria T. Bediamol, Official Court Reporter, United
3 States District Court, District of Hawaii, do hereby certify
4 that pursuant to 28 U.S.C. §753 the foregoing is a complete,
5 true, and correct transcript from the stenographically reported
6 proceedings held in the above-entitled matter and that the
7 transcript page format is in conformance with the regulations
8 of the Judicial Conference of the United States.

9

10 DATED at Honolulu, Hawaii, July 22, 2022.

11

12

13 /s/ Gloria T. Bediamol

14 GLORIA T. BEDIAMOL.

15 RMR, CRR, FCRR

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